IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.9154 OF 1998

A. Raja .. Petitioner

-Vs-

1. The Govt. of Tamil Nadu,
rep. by its Secretary,
Education Department,
Fort St. George, Chennai 9.

2. Director of School Education,
Chennai 6.

3. Inspector of Anglo Indian School,
Chennai 6.

4. Bishop and Manager of CSI Schools,
CSI Madras Diocese,
226, Cathedral Road,
Chennai 86.

5. The Correspondent,
Bishop Corrie Anglo Indian
Hr. Sec. School, Chennai 1.

6. The Headmaster,
Bishop Corrie Anglo Indian
Hr.Sec.School, Chennai 1.

7. Mr. Samuel Paul Ebaneser,
Enquiry Officer,
Headmaster and Correspondent
CSI St.David□s Hr. Sec. School,
Cuddalore 607 003. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K. Chandru
Senior Counsel for
Mr.M. Ramamoorthy

For Respondents 1-3 : Mrs.N.G. Kalaiselvi,
Special Govt. Pleader

Respondents 4-7 : Mr.A.L. Somayaji,
Senior Counsel for
Mr.K.A. Ravindran

:J U D G M E N T

The petitioner was serving as a Secondary Grade teacher under Bishop Corrie Anglo Indian Higher Secondary School, represented by 5th respondent. Said school is administered by the Church of South India of Madras Diocese, the fourth respondent and it is partly aided by the Government. Sixth respondent, the Headmaster of the school served a charge memo dated 28.11.1995 alleging inter alia that the petitioner had misbehaved with a girl student and had ab used his profession and failed to maintain discipline in the class room. The petitioner submitted his explanation denying the allegations. Thereafter he was placed under suspension pending enquiry. Seventh respondent was appointed as the enquiry officer. Enquiry Officer submitted his report containing findings against the petitioner and thereafter the petitioner was terminated from service by order dated 25.3.1996. The petitioner preferred appeal before the second respondent. The second respondent forwarded the appeal to the third respondent, who allowed the appeal and directed that the petitioner should be reinstated in service mainly on the ground that the enquiry was commenced in the absence of the delinquent, the delinquent was not allowed to cross-examine the girl student separately, he has placed under suspension but had not been paid subsistence allowance, the signatures of all the students in the earlier letters of complaint and the signature in the enquiry proceedings differ, the allegations made against the delinquent were vague, the girl students were not separately examined and the Correspondent, who is the officer to pass the order of termination, has participate in the enquiry held on 25.1.1996. The petitioner sent a lawyer s notice stating that fifth respondent is not in a position to implement the order dated 14.11.1996, passed by the third respondent. The petitioner at that stage filed W.P.No.10773 of 1997 to implement the order passed by the third respondent and to reinstate the petitioner in service with backwages. The said writ petition was resisted by the respondents 3 to 6 by taking a stand that the petitioners school is a minority institution and the order passed by the third respondent is without jurisdiction. Respondents 4 to 6 had also filed W.P.No.56 78 of 1998 challenging the order of the third respondent dated 14.11.1996. It is stated by the petitioner that in view of such a challenge, as a counter W.P.No.5678 of 1998 was filed by the Management and the present writ petition has been filed challenging the order of termination itself.

2. A counter affidavit has been filed by the Management justifying the order of termination and denying the allegations relating to non-compliance of the principles of natural justice.

3. It appears that in the meantime W.P.No.5678 of 1998 filed by the Management has been allowed on concession of the parties. In other

words, the direction given by the appellate authority had been quashed. Since W.P.No.10773 of 1997 has been filed to implement the order passed by the appellate authority, it is obvious that such writ petition, even if now pending, has become infructuous and the validity of the order of termination has to be examined in the present writ petition.

4. Learned senior counsel appearing for the petitioner has challenged the validity of the order mainly on the ground that the charges levelled against the petitioner were vague and the enquiry was conducted in a prejudicial manner against the principles of natural justice. It has been further contended that the order of suspension could not have been continued beyond two months and at any rate subsistence allowance having been not paid, the subsequent order of termination is illegal.

5. So far as the first point is concerned, even though it may appear attractive, on a closer scrutiny the contention appears to be misconceived. On going through the charge memo it cannot be said that the allegations are vague. Similarly on going through the records relating to the disciplinary proceeding, it cannot be said that adequate opportunity has not been given to the petitioner. The specific contention of the learned senior counsel for the petitioner that the petitioner was not afforded the opportunity to cross-examine individually the girl students concerned, thereby violating the principles of natural justice cannot be countenanced in the peculiar circumstances of the case. The principles of natural justice are not embodied rules and the extent and manner of compliance with principles of natural justice would vary from case to case and depend upon peculiar facts and circumstances of each case.

6. In 1998(4) L.L.N. 961 (AVINASH NAGRA v. NAVODAYA VIDYALAYA SAMITI AND OTHERS) the decision of the authorities to dispense with the services of a Teacher on the basis of similar allegation of sexual misdemeanor without holding a full-fledged enquiry had been upheld by the Supreme Court by observing that there was justification in not exposing the concerned girl and her roommates to cross-examination, harassment and further publicity. It was observed :

 . . . In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination. . . .

7. In the present case, the method of examining all the girl students together in presence of the delinquent cannot be characterized as violative of any principle of natural justice. It has to be borne in mind that a disciplinary proceeding does not partake the character of a criminal trial and it is not expected that the procedure adopted in a criminal trial should be followed in such disciplinary proceeding. Even though the petitioner had made allegations that adequate opportunity of cross-examination had not been given, on going through the counter and the connected records, I am satisfied that the principles of natural justice have been complied with.

The report of the Enquiry Officer finding fault with the petitioner is also based on materials on record and it cannot be said that the conclusions are without any basis or perverse. Keeping in view the nature of allegations, the proposed punishment is also commensurate with the alleged misdemeanor. In such view of the matter, I am not inclined to accept the first contention regarding the defects in the enquiry.

8. It appears that subsistence allowance had not been paid. Similarly the suspension order had not been continued beyond two months with the approval. Non-payment of subsistence allowance or other amount during pendency of the proceeding does not have the effect of vitiating the proceedings ipso facto unless it is established that the delinquent is prejudiced by such non-compliance. In the present case, the delinquent has participated in the enquiry and had been given opportunity to defend himself. Non-payment of allowance or other dues during pendency of the proceedings does not have the effect of vitiating the proceedings.

9. For the aforesaid reasons, I am not inclined to accept the contentions raised in the writ petition and the order of termination appears to be justified. However, since suspension could not have been continued beyond 2 months, and even otherwise the petitioner would have been entitled to get the subsistence allowance, while refusing to interfere with the order of termination, the respondents 4 to 6 are directed to pay the subsistence allowance payable for the period during which the order of suspension was valid and to pay the full amount for the subsequent period till the date of termination. This amount may be paid within a period of three months from to-day.

10. Subject to the aforesaid direction and observation, the writ petition is disposed of. No costs.

Index : Yes
Internet : Yes
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To

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